IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
REVIEW PETITION NO.68 OF 2005
IN
WRIT PETITION NO.5675 OF 2004

1. Chellaram Jethanand Madhrani age 64 years, Occ: Business r/o Bldg No.5, Room No.4 Ramkrishna Coop.Housing Socy. Bldg., Gulmohar Road No.30 JVPD Scheme, Andheri (W) Mumbai 400 049.

2. Purushottam Jethanan Madhrani age 60 years, Occ: Business r/o Bldg No.13, Room No.6 Ramkrishna Coop.Housing Socy. Bldg., Gulmohar Road No.30 JVPD Schemem, Andheri (W) Mumbai 400 049. .... Petitioners

- Versus -

1. Maruti Raghunath Kadam age 58 years, Occ. Nil r/o false address furnished to Court being Room No.1 ground floor, Mohammed Yusuf Gardee Charitable Trust Bldg. Nos.25, 25A, 27 Old Hanuman Lane, Mumbai 400 002 deceased whose estate is represented by and who is to be substituted by his heirs & legal representatives:

1a. Smt. Kalawati Maruti Kadam

1b. Ms Meena Maruti Kadam

1c. Nitin Maruti Kadam

1d. Ms Seema Maruti Kadam

1e. Mrs. Rekha Madhukar Babar

all adults and legal repre-sentatives of Respondent No.1 & 1a to 1d reside at B-15, Vishram Dham, Veena Nagar, Phase II, LBS Marg, Mulund (West), Mumbai 400 080, reside at Vishram Govind Society, No.1e.

Flat No.1, ground floor, A Wing, Virar (East), Dist: Thane.

2. The State of Maharashtra .... Respondents

Shri G.S. Godbole for the Petitioners.

Sarvasri A.A. Kumbhakoni with B.K. Raje and T.D. Deshmukh for the Respondent Nos.1a to 1e.

Shri S.K. Chinchalikar, Asst. Government Pleader, for the Respondent-State.

WITH

CIVIL APPLICATION (STAMP) NO.27811 OF 2004
IN
WRIT PETITION NO.5675 OF 2004

1. Chellaram Jethanand Madhrani age 64 years, Occ: Business r/o Bldg No.5, Room No.4 Ramkrishna Coop.Housing Socy. Bldg., Gulmohar Road No.30 JVPD Scheme, Andheri (W) Mumbai 400 049.

2. Purushottam Jethanan Madhrani age 60 years, Occ: Business r/o Bldg No.13, Room No.6 Ramkrishna Coop.Housing Socy. Bldg., Gulmohar Road No.30 JVPD Schemem, Andheri (W) Mumbai 400 049. .... Petitioners

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1. Maruti Raghunath Kadam age 58 years, Occ. Nil r/o false address furnished to Court being Room No.1 ground floor, Mohammed Yusuf Gardee Charitable Trust Bldg. Nos.25, 25A, 27 Old Hanuman Lane, Mumbai 400 002 deceased whose estate is represented by and who is to be substituted by his heirs & legal representatives:

2. State of Maharashtra .... Respondents

AND

1a. Smt. Kalawati Maruti Kadam

1b. Ms Meena Maruti Kadam

1c. Nitin Maruti Kadam

1d. Ms Seema Maruti Kadam

1e. Mrs. Rekha Madhukar Babar

all adults and legal repre-sentatives of Respondent No.1 & 1a to 1d reside at B-15, Vishram Dham, Veena Nagar, Phase II, LBS Marg, Mulund (West), Mumbai 400 080, No.1e. reside at Vishram Govind Society, Flat No.1, ground floor, A Wing, Virar (East), Dist: Thane. .... Proposed Respondents

Shri G.S. Godbole for the Petitioners.

Shri S.K. Chinchalikar, Asst. Government Pleader, for the Respondent-State.

Sarvasri A.A. Kumbhakoni with B.K. Raje and T.D. Deshmukh for the Respondent Nos.1a to 1e.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: DECEMBER 15, 2005

JUDGMENT:

1. Heard. Perused the records.

2. The petitioners seek to review the order dated 26-10-2004 passed in Writ Petition No.5675 of 2004 on the ground that there is error apparent on the face of the record in as much as that the Court had proceeded to

dismiss the said writ petition on the basis of factually incorrect assumption that no action was taken by the petitioners for substitution of the heirs of the deceased respondent while in fact Civil Application (Stamp) No.27811 of 2004 was already lodged on 25-10-2004 but the said fact was not brought to the notice of the Court while disposing the petition on 26-10-2004.

3. The order dated 26-10-2004 refers to two issues: firstly, as to whether, in a petition which is filed against a dead person, his legal representatives can be allowed to be brought on record, and secondly, if the answer to the same is in the affirmative, then whose obligation it is to move for such an order, and in case of his failure, what could be the consequences? While dealing with those issues, it was held that the decree which was challenged in the petition was passed on 12-3-2004 by the lower Appellate Court. The respondent had already expired on 2-3-2004; but the arguments in the appeal were already concluded prior to the expiry of the respondent. The writ petition was filed on 29-6-004, much after the expiry of the respondent. In those circumstances, considering the provisions of Order 22 of the Code of Civil Procedure, 1908, it was held that there was no question of bringing the legal representatives on record as the petition itself was filed against a dead person. However, the defect in the

petition could have been remedied by joining the legal representatives as the party respondents.

4. Perusal of paras 14 and 15 of the order dated 26-10-2004, as rightly submitted by the learned Advocate for the petitioners, disclose that the petition was dismissed on account of failure on the part of the petitioner to join the legal representatives of the deceased respondent as the party respondents to the petition. At the same time, the records disclose that the petitioners had already taken steps to join the legal representatives of the respondent as the parties to the petition by filing Civil Application (Stamp) No.27811 of 2004 on 25-10-2004. This fact, however, was not brought to my notice on 26-10-2004 when the petition was disposed of. Obviously, there is error apparent on the face of the record and therefore the order of 26-10-2004 needs to be recalled and the writ petition to be heard on merits.

5. The review petition therefore succeeds and is allowed and the order of 26-10-2004 in Writ Petition No.5675 of 2004 is therefore hereby recalled and the petition is restored to the board. The Civil Application (Stamp) No.27811 of 2004 is allowed and the legal representatives of the deceased respondent are permitted to be joined as the party respondents in place of the respondent No.1. The amendment to be carried out

to the cause title forthwith. Civil application stands disposed of.